

1 ANDRÉ BIROTTE JR.
United States Attorney
2 JOSEPH B. WIDMAN
Assistant United States Attorney
3 Chief, Riverside Branch Office
THOMAS D. STOUT (Cal. Bar No. 241348)
4 Assistant United States Attorney
3403 10th Street, Suite 200
5 Riverside, California 92501
Telephone: (951) 276-6938
6 Facsimile: (951) 276-6202
Email: thomas.stout@usdoj.gov
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Attorneys for Plaintiff
8 UNITED STATES OF AMERICA
9

10 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 EASTERN DIVISION
12

13 UNITED STATES OF AMERICA,

Plaintiff,

14 v.
15

KAWAUM MARQUEZ SCOTT,
16 NEKEYIA NECOLE WEATHERSPOON,
aka "Keey Bee,"

17 Defendants.
18
19

No. ED CR 13-116-VAP

GOVERNMENT'S MOTION IN LIMINE
NO. 3: TO PRECLUDE INTRODUCTION
OF DEFENDANTS' HEARSAY BY
DEFENDANTS

Trial Date: April 29, 2014
Pretrial
Conference: April 21, 2014
9:00 a.m.
Location: Courtroom 2

20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorney Thomas D. Stout,
23 hereby moves in limine to preclude defendants Kawaum Marquez Scott
24 ("defendant Scott") and Nekeyia Necole Weatherspoon ("defendant
25 Weatherspoon") from offering evidence, argument, or cross-
26 examination regarding any hearsay statements made by defendants.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Between October 2012, and December 2012, defendants Kawaum
4 Marquez Scott ("defendant Scott") and Nekeyia Necole Weatherspoon
5 ("defendant Weatherspoon") recruited the then-14-year-old¹ child
6 victim in this case to work for them as a prostitute. They
7 advertised her services through the internet, instructed her to
8 perform numerous sexual acts with customers, and collected from the
9 money customers paid her.

10 At trial, the government intends to introduce inculpatory
11 statements made by defendants during video-recorded interviews with
12 investigating agents. In addition to the inculpatory statements the
13 government intends to introduce, defendants made various exculpatory
14 statements during the interview that the government does not intend
15 to introduce at trial. As set forth below, such exculpatory
16 statements are inadmissible hearsay which the Court should exclude
17 if defendants seek to introduce them.

18 **II. SUMMARY OF RELEVANT FACTS**

19 A summary of defendants' alleged conduct is set forth in the
20 government's motion in limine No. 1, and is hereby incorporated by
21 reference. The government will only discuss additional facts
22 specifically pertaining to this motion.

23 After their arrest on November 14, 2013, defendants both
24 consented to be interviewed by investigating agents. Both made a
25 variety of inculpatory admissions and exculpatory claims during
26 those interviews.

27 ¹ The child victim turned fifteen during the course of
28 defendants' conduct.

1 On March 30, 2014, the government disclosed to defense counsel
2 the portions of those interviews it currently intends to introduce
3 at trial.²

4 **III. ARGUMENT**

5 As the government only seeks to introduce portions of the video
6 recorded interviews, defendants may seek to introduce their own
7 exculpatory claims made during those interviews in lieu of
8 testifying at trial. Because such evidence is hearsay when offered
9 by the party making the statements, the Court should exclude such
10 evidence and order defendants to refrain from referring to such
11 evidence either in cross-examination or argument.

12 **A. DEFENDANTS MAY NOT AVOID TESTIFYING BY RELYING ON THEIR** 13 **OWN SELF-SERVING HEARSAY STATEMENTS ELICITED FROM OTHER** 14 **WITNESSES.**

15 A defendant's prior, out-of-court statements are admissible
16 only if offered against him or her. Fed. R. Evid. 801(d)(2). If
17 elicited by the defendant, such statements are inadmissible hearsay.
18 Fed. R. Evid. 801(c); United States v. Fernandez, 839 F.2d 639, 640
19 (9th Cir. 1988) (district court properly sustained government's
20 hearsay objection to defendant's attempt to solicit defendant's
21 post-arrest statement during cross-examination of government
22 witness).

23 A defendant does not have the right to present self-serving
24 hearsay statements. See Fed. R. Evid. 801(d)(1); see also United
25 States v. Orteaga, 203 F.3d 675, 682 (9th Cir. 2000) (affirming
26 order limiting defendant's ability to elicit his exculpatory hearsay

27 ² The government reserves the right to amend its intended
28 exhibit list, including the excerpts of these videos it intends to
introduce, prior to trial.

1 statements on cross-examination); Fernandez, 839 F.2d at 640; United
2 States v. Willis, 759 F.2d 1486, 1501 (11th Cir. 1985) (defendant's
3 attempt to elicit exculpatory statements made at the time of arrest
4 to prove he lacked requisite knowledge was inadmissible hearsay).
5 To permit a defendant to place his statements before the jury
6 without subjecting him to cross-examination would be to allow
7 "precisely what the hearsay rule forbids." Fernandez, 839 F.2d at
8 640.

9 **B. THE RULE OF COMPLETENESS DOES NOT TRUMP THE RULE AGAINST**
10 **HEARSAY.**

11 A defendant may not invoke Federal Rule of Evidence 106, also
12 known as the "rule of completeness," to circumvent the rules barring
13 hearsay evidence. "[R]ule 106 does not compel admission of otherwise
14 inadmissible hearsay evidence." United States v. Collicott, 92 F.3d
15 973, 983 (9th Cir. 2006). Thus, the rule of completeness does not
16 require the government to enter all of defendants' statements made
17 during an interview or permit the defendants to circumvent the rules
18 against hearsay by seeking to elicit other, non-incriminating
19 statements from government witnesses, or defense witnesses other
20 than defendant. See, e.g., Orteaga, 203 F.3d at 682; Collicott, 92
21 F.3d at 983.

22 **IV. CONCLUSION**

23 Defendants may not place their own hearsay statements into
24 evidence. This includes eliciting their own statements through
25 defense witnesses or through government witnesses on cross-
26 examination. Accordingly, the government respectfully requests that
27 the Court issue an order precluding defendants from eliciting their
28 own self-serving out of court statements from witnesses at trial and

1 from referring to such statements, unless separately admitted by the
2 government, in argument or cross examination.